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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/255,968	02/23/1999	NANCY L. ANDERSON	P03735US0	9218

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ZARLEY MCKEE THOMTE VOORHEES & SEASE  
801 GRAND AVENUE  
SUITE 3200  
DES MOINES, IA 50309

EXAMINER

REAGAN, JAMES A

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 05/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

100

## Office Action Summary

Application No.

09/255,968

Applicant(s)

ANDERSON ET AL.

Examiner

James A. Reagan

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2163

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 0202.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-11 and 23-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-11 and 23-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### **Status of Claims**

1. This action is in response to the amendment filed on 13 March 2002.
2. Claims 1, 3, 4, and 10 have been amended (paper #3).
3. Claims 5 and 12-22 have been cancelled (paper #3).
4. Claims 23-31 have been added (paper #3).
5. Claims 1-4, 6-11, and 23-31 have been examined.
6. The rejections of claims 1, 3, 4, and 10 have been updated to reflect the amended limitations.
7. The rejections of claims 2, 6-9 and 11 are unchanged.
8. The rejections of claims 23-31 are original.

## **RESPONSE TO ARGUMENTS**

9. Applicant's arguments filed on 23 February 2002 have been fully considered but they are not persuasive. Referring to the previous Office action, examiner has cited relevant portions of the references as a means to illustrate the systems as taught by the prior art. As a means of providing further clarification as to what is taught by the references used in the first Office action, Examiner has expanded the teachings for clarity while maintaining the same grounds of rejection of the claims except where noted. This information is intended to assist in illuminating the teachings of the references while providing a means to establish further support for the rejections of the claims.

Applicant's arguments with respect to claims 1, 2-4 and 6-11 have been considered but are moot in view of the new ground(s) of rejection. However, in an effort to elucidate the applicability of the selected prior art, the Examiner has provided a riposte to the Applicant's arguments.

In response to applicant's argument that Matyas (US 6,102,287) is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Matyas discloses an electronic payment system that also provides product survey information (abstract). Matyas teaches presenting a question to a customer at the point of transaction (See column 2, lines 42-44), and obtaining a response to the question from the customer at the point of transaction (See column 2, lines 45-47). Inherently, if questions are posed at the point of sale, then they are also posed at the time of the sale. This is analogous to the present invention because Applicant recites a device that poses questions to a buyer at the point of transaction and at the time of the transaction. Matyas in combination with Cadotte (US 4,345,315) addresses the limitation of evaluating the customer service performance of a specific employee. Furthermore, as shown in column 1, lines 32-53, Matyas discloses Secure Electronic Transaction (SET) developed by

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MasterCard and VISA, again linking POS transactions with the customer survey procedure.

10. The following is a **Final Rejection** of all claims and associated limitations pending in the current application as amended in paper #3.

### **Claim Rejections - 35 USC § 103**

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-4, 6, 9, 23, 26, 29, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas (US 6,102,287) in view of Cadotte (US 4,345,315).

#### **Claims 1, 23, and 31:**

Matyas teaches presenting a question to a customer at the point of transaction (See column 2, lines 42-44), obtaining a response to the question from the customer at the point of transaction (See column 2, lines 45-47), recording the customer's response (See column 29, lines 54-56), and evaluating the response (See column 3, lines 6-9). Matyas does not teach feedback about the employee's performance. Cadotte, however in column 1 lines 30-31, speaks to, "complaints about employee knowledge and service." It would be an obvious

advantage to one of ordinary skill in the art at the time of the invention use the electronic payment device to collect survey information about employees as well as products and services. The suggestion or motivation to combine the use of the customer feedback system with the employee's performance would increase customer feedback and allow for a more timely and accurate measure of customer satisfaction with regard to the efficiency of an employee.

**Claim 2:**

Matyas discloses the methods described above. Matyas does not teach linking the question and response with the employee who served the customer. Cadotte, however in column 1 lines 6-9 speaks to an, "...electronic terminal for anonymously obtaining data on customer satisfaction with the services rendered by a service organization..." and in lines 31-32, "...complaints about employee knowledge and service." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention use the electronic payment device to collect survey information about employees as well as products and services, and to link together the service with the service provider, such as an employee selling an item. The suggestion or motivation to combine the customer service evaluation system with a linkage between questions and responses about employees would increase customer feedback and allow for a more timely and accurate measure of customer satisfaction regarding an employee's performance.

**Claim 3:**

Matyas teaches that the question is presented to the customer on the display of an electronic payment device (See column 2, lines 42-44).

**Claim 4:**

Matyas discloses the methods described in claim 1. Matyas does not expressly disclose that the question is presented on a monitor and the response is entered on a keyboard. Cadotte, however, in column 1, lines 57-58 specifically refers to "terminal and/or keyboard." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to include in any interactive electronic terminal a display device (output) and a keyboard device (input). These are a well-known and widely used input and output devices for effortlessly using an electronic terminal. The suggestion or motivation for combining the use of a keyboard and a monitor with an employee evaluation system would provide a simple and efficient means to utilize a computing device and input customer feedback.

**Claims 6 and 26:**

Matyas discloses the methods described above. Matyas does not expressly disclose that the question that is presented to the customer is randomly picked from a group of questions. Cadotte, however, in column 56, lines 15-18 specifically refers to "...substituting different permanently recorded inquiries and the responses for the displayed inquiries." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to provide a plurality of questions that would be displayed, randomly or in a predetermined

order, for the consumer to respond to. This is a well-known and widely used technique for conducting a survey and evaluating customer satisfaction with products or services. The suggestion or motivation for combining the employee evaluation system with the technique of using a randomly displayed group of inquiries would provide a means for conducting the survey and enhancing the ability to gather factual data in a simple and efficient manner, and to provide a degree of security and integrity to the process.

**Claim 9:**

Matyas discloses the methods described above. Matyas does not expressly disclose compiling the responses in a computer. Cadotte, however, in Figure 7 shows a controller consisting of ROM, buffers, registers, and the like. It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to compile the results on a computer. This is a well-known and widely used device for tabulating and evaluating the results of a customer satisfaction survey. The suggestion or motivation for combining the employee evaluation system and the use of a computer would provide a means for conducting the survey and enhancing the ability to gather factual data in a simple and efficient manner.

**Claim 29:**

Matyas teaches recording the customer's response (See column 29, lines 54-56).



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13. Claims 7, 8, 28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Fethe (US 5,926,794).

**Claims 7 and 28:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose accumulating scores for questions for individual employees over a defined time period. Fethe, however, in Figure 5 does show, "...an individual score profile report generated by the performance appraisal system." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to use the data from the survey to evaluate an employee's performance within a time period. The suggestion or motivation to combine the employee evaluation system and the practice of a time-based evaluation scheme is a well-known and widely used technique that enables an employer to improve the performance of his workers and to track their progress.

**Claim 8:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose accumulating scores for questions for different measurement levels over a defined time period. Fethe, however, in Figure 5 does show, "...an individual score profile report generated by the performance appraisal system." It would be obvious advantages to one of ordinary skill in the art at the time of the invention to combine the scores of a time period to further evaluate the change in an employee's performance. The suggestion or

motivation for combining the employee evaluation system and the technique of measuring the various competency levels of an employee over a period of time is a well-known and widely used technique that enables an employer to track the performance of his workers and gauge their performance against others as well as compositely with other stores, restaurants, etc.

**Claim 30:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose tying employee compensations to survey responses. Fethe, however, in column 2, lines 41-55 does disclose an employee appraisal system and management of employee rewards. It would be obvious advantages to one of ordinary skill in the art at the time of the invention to combine the responses from customer surveys with a bonus payment or other similar compensation. By basing an employee's salary or bonus on his customer service performance, each employee is encouraged to provide the best possible service to all customers, thereby improving sales and throughput.

14. Claims 10 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Dowden (US 5,923,247).

**Claims 10 and 24:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not disclose expressly communicating an alert signal when a customer service response falls below a threshold. Dowden, however, in

column 10, lines 13-17 does state, "...the alarm indicator activated if the duration of an unavailability condition exceeds a predetermined value is the same one as that activated if the number of occurrences of an unavailability condition in an analysis period exceeds the threshold value." It would be an obvious advantage to one of ordinary skill in the art at the time of the invention to use a threshold value to trigger an alarm, with respect to either a rising or falling state. The suggestion or motivation for combining the employee evaluation system and applying a threshold value to customer service responses would allow performance to be monitored and action taken quickly before replies trail off. By monitoring an alarm state as indicated by the survey machine, action may be taken to increase customer response and thereby maintain the usefulness of the survey system.

15. Claims 11 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Plainfield (US 5,893,075).

**Claims 11 and 25:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose offering the customer a reward as an incentive to answer the question. Plainfield, however, in column 1, line 67 to column 2, line 4 does state, "To stimulate customers to enter data, the system may include means for inducing customers to enter data about themselves into a customer database, such as generating a message on the computer display screen offering an incentive to the customer for entering such data." It would be an

obvious advantage to one of ordinary skill in the art at the time of the invention to offer an incentive to respond to a survey question. The suggestion or motivation for combining the employee evaluation system with offering a reward to participate in a survey is a well-known and widely used practice for increasing the participation by customers or clients who wouldn't ordinarily take the time to contribute.

16. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Matyas in view of Cadotte in further view of Levie et al., (US 6,065,679).

**Claim 27:**

Matyas and Cadotte disclose the methods described above. Matyas and Cadotte do not expressly disclose that the customer and the employee are physically present at the store at the time of the transaction. Levie, however, in column 2, line 14 discloses a POS terminal, and in column 51, line 58 discloses using the terminal as a customer survey device, inherently disclosing that the customer is at the store at least during the transaction and at the time of the transaction, and that the involved employee, who inherently works at the store, was present during the process leading up to the transaction. It would have been obvious to one of ordinary skill in the art at the time of the invention to be able to use the device while the customer and the employee are in the store conducting the transaction. Inherently, this is where the majority of transactions will occur,

and the system should be operable to accept payments and conduct the routine survey "in-house."

### **Conclusion**

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to **James A. Reagan** whose telephone number is **(703) 306-9131**. The examiner can normally be reached on Monday-Friday, 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Tariq Hafiz** can be reached on **(703) 305-9643**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **(703) 305-3900**.

Any response to this action should be mailed to:

**Commissioner of Patents and Trademarks**

**Washington, D.C. 20231**

or faxed to:

**(703) 746-7238** [After Final communications, labeled "Box AF"]

**(703) 746-7239** [Official communications]

**(703) 746-8144** [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 2, 2121 Crystal Drive, Arlington, VA, Fourth Floor Receptionist.

JAR

09 May 2002

TARIQ R. HAFIZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100